

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
January 21, 2003
6:30 p.m. Closed Session
7:30 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:30 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Art Hartinger

Employee Organizations: MEA

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Steve Mattas

Unrepresented Employee: City Manager

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:30 p.m.)

V. APPROVAL OF MINUTES: January 7, 2003

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Presentations:

Water District Activities by Director Santos of the Water District

Presentation to the City of Milpitas in recognition of support to Wildlife Center of Silicon Valley

Certificates of Appointment/Reappointment:

- Coel Agustin, appointment to the Youth Advisory Commission
- Daniel Hay, re-appointment to the Youth Advisory Commission
- Paul Hay, re-appointment to the Planning Commission
- Marilyn Hay, appointment to the Library Advisory Commission
- Deepka Lalwani, re-appointment to the Planning Commission

Commendations:

- SAFE Team Members (George Washburn)

Kathy Duncan	Michael J. Mendizabal	Honghanh Coburn
Marsha L. Grilli	Nancy C. Mendizabal	Hui Kathy Liu
David E. Harman	Susan B. McLain	Marie Pham
Hilton J. Hoyt	Stephen H. Tran	David Kolden
Jeffrey D. LeValley	Coleen Matsuno	Chelie Kolden
Jennifer A. Lind	David Coburn	Juniel Butler
		Tim H. Phan

Proclamation:

- Chinese/Vietnamese New Year

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

- 1. Weed Abatement Hearing and Adoption of Resolution Ordering Abatement Program (Staff Contact: Patti Joki, 586-3370)**
- 2. Appeal of Planning Commission Action Regarding Home Depot's Six-Month Review and Additional Condition of Approval for Use Permit No. 1555, 1177 Great Mall Drive Applicant: Home Depot (Staff Contact: Troy Fujimoto, 586-3287)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 7, 2003

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Review Project Closeout Progress; Approve Contract Change Orders; Adopt Resolutions for Initial Acceptance; Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)

***RA6. Request Authorization to Purchase and Resale Affordable Housing Unit at 24 Rain Walk at the Parc Metropolitan Great Mall Residential Development (Staff Contact: Felix Reliford; 586-3071)**

***RA7. Approve Agreement Amendment between the City and Agency, Approval of a Resolution of Intent, and Authorization to Engage a Lobbyist (Staff Contact: Blair King, 586-3060)**

***RA8. Authorization to Enter into Negotiations with RGC Courthomes, Inc., for Affordable Housing Units (Staff Contact: Blair King, 586-3060)**

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 3. Status Report and Review of All America City Competition: Mayor Esteves**
- *4. Approve Re-Appointment to the Senior Advisory Commission: Mayor Esteves**
- 5. Discussion of Broadcasting City Meetings over the Internet and Publishing Staff Reports Online: Councilmember Gomez**

XV. UNFINISHED BUSINESS

- 6. Approve Off-Leash Dog Park Project – Environmental Review, Site Lease, Supplemental Budget Appropriation, Authorization to Bid (Staff Contact: Blair King, 586-3060)**

XVI. NEW BUSINESS

- 7. Approve the 2003 Community Advisory Commission Work Plan (Staff Contact: James Lindsay, 586-3274)**
- 8. Approve Request for Flag Ceremony at Higuera Adobe: Boy Scouts of America Troop 101 Requests Permission to Raise the American and Vietnamese Flags at the Higuera Adobe on January 25, 2003, 10:30 a.m. to 12:30 p.m. (Staff Contact: Blair King, 586-3060)**
- *9. Accept Wal-Mart's Safe Neighborhood Heroes Grant And Increase Budget Appropriation For Graffiti Abatement (Staff Contact: Gloria Anaya, 586-3075)**
- *10. Report on Cable TV Franchise Renewal Progress (Staff Contact: Bill Marion, 586-2701)**

XVII. ORDINANCES

- *11. Adopt Ordinance No. 227.3, Amending Chapter 215 of Title V to Prohibit Smoking within 25 feet of Entrances to all City-Owned Buildings (Staff Contact: Steve Mattas, 586-3040)**
- *12. Adopt Urban Runoff Ordinance No. 239.1 Amending Sections 2, 6, 8, 11, Repealing Sections 12 through 15, and Adding New Sections 12-14 to Chapter 16, Title XI of the Milpitas Municipal Code Establishing an Administrative Citation Process for Urban Runoff Pollution Violations (Staff Contact: Darryl Wong, 586-3345)**

XVIII. RESOLUTION

- *13. Adopt Resolution Declaring a Public Water Shortage Emergency and Approve Extension of Water Supply for Spring Valley Heights Subdivision (Staff Contact: Darryl Wong, 586-3345)**

XIX. BIDS AND CONTRACTS

- 14. Approve Second Amendment to Employment Agreement between City of Milpitas and Thomas J. Wilson (Staff Contact: Steve Mattas, 586-3040)**
- *15. Approve Agreement Amendment: MacKay and Soms Civil Engineers, Inc., State Route 237/I-880 Right-of-Way Engineering, (Project No. 4170) (Staff Contact: Elizabeth Racca-Johnson, 586-3306)**
- *16. Authorize the Purchase of A Replacement Fire Engine (Staff Contact: Lou Zenzen, 586-3161)**

- *17. Authorize Purchase of Replacement Public Safety Communications Radios (Project No. 8125) (Staff Contact: Lou Zenzen, 586-3161)**

XX. CLAIMS AND DEMANDS

- *18. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**
- *19. Approve Payroll Register (Staff Contact: Emma Karlen, 586-3145)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 4, 2003
AT 7:30 P.M.**

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XII. PUBLIC HEARINGS

1. WEED ABATEMENT HEARING AND ADOPTION OF RESOLUTION ORDERING ABATEMENT PROGRAM (STAFF CONTACT: PATTI JOKI, 586-3370)

BACKGROUND: At its meeting of December 3, 2002, the Council adopted Resolution No. 7254 declaring weeds on certain described properties to be a public nuisance and setting a public hearing for January 21, 2003. A copy of Resolution No. 7254 was forwarded to the Santa Clara County Fire Marshal. A notice of Public Hearing was subsequently published and property owners were mailed a notice of the proposed abatement by the Santa Clara County Fire Marshal. The purpose of the public hearing is for property owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made a lien upon the property. A list of properties to be abated is included in the Council's agenda packet along with a resolution directing the County Fire Marshal to abate the weeds.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt resolution ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

2. APPEAL OF PLANNING COMMISSION ACTION REGARDING HOME DEPOT'S SIX-MONTH REVIEW AND ADDITIONAL CONDITION OF APPROVAL FOR USE PERMIT NO. 1555, 1177 GREAT MALL DRIVE. APPLICANT: HOME DEPOT (TROY FUJIMOTO, 586-3287)

BACKGROUND: At its October 23, 2002, meeting, the Planning Commission completed an additional six month review of Home Depot and, with a 6-1 vote, added a new special condition to the 2000 use permit (Use Permit No. 1555) that states the following:

By February 1, 2003, the applicant shall complete construction of the screen wall, pallet enclosure and parking approved as part of S-Zone Amendment (P-SA2001-74). This condition serves to address identified, chronic zoning violations and land use compatibility issues of outside, unscreened storage, not only adjacent to residential uses, but next to a major Mall entrance and the City's Midtown area, that are contrary to the operational expectations that were envisioned as part of the original use permit approved. (P)

As per original Special Condition No. 21, the six-month review was required to evaluate any land use compatibility issues with Home Depot's operations. Based on photographic evidence presented by staff and verbal complaints and letter of complaint received by staff from Parc Metropolitan, the new condition above was added to relieve sound impacts from the northern loading area onto the neighboring residential uses and visual impacts of outdoor, unscreened storage of materials. In addition, the Commission determined Special Condition No. 21, which required a six-month review, had been satisfied, subject to the new condition.

An appeal of the Planning Commission's action was filed with the City on October 30, 2002 by Matt Francois of Cassidy, Shimko, & Dawson on behalf of Home Depot. The appeal states that the additional Condition of Approval should not be imposed due to the following reasons:

1. The addition of new conditions are not authorized by Special Condition No. 21 of the original Use Permit No. 1555, given that there is no evidence of incompatibility between Home Depot's operations and the neighboring residential uses.
2. The additional new condition is not authorized by Milpitas Zoning Ordinance XI-10-19.07 (General Commercial, Standard Conditions) or by any other provision of law.

In addition, at the October 23, 2002 Planning Commission meeting, Mr. Francois contended the following:

3. Home Depot has complied with all conditions of approval, thus there are no more outstanding issues associated with the Use Permit.
4. Home Depot does not "store" product outside their building. It is unloaded and "staged" for only a temporary period of time and thus does not meet a dictionary definition of storage as the "*safekeeping of goods in a depository or warehouse.*"
5. A new nine-foot tall screen wall that was submitted by Home Depot and approved by the Planning in November 2001 will have a negative effect on aesthetics and will only benefit three residents.
6. The six-month review in regards to compatibility was limited to noise issues only, not visual impacts.

City staff and the City Attorney's office have reviewed the appeal. Regarding the appellant's first issue (#1) of whether a new condition can be added as part of a six-month review if there is, as Home Depot contends, no incompatibility issue, three points are noted. The Planning Commission has broad authority to impose conditions on conditional use permits. The zoning code directs the Commission to consider such "normal planning considerations" such as "suitability of the site; conformance to the Master Plan; ...imposition of noises, odors and health and safety hazards upon nearby residential areas, and in general, to promote the public health, safety, peace, morals, comfort and welfare... and as it deems necessary to protect the best interest of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the general plan". This authority is sufficiently broad to include conditions requiring subsequent review of the permit to ensure that the use after operation begins is consistent with the normal planning considerations evaluated with the original approval. In addition, Condition 21 regarding the need to conduct a six-month review implicitly authorized the Commission to impose new conditions on the use permit to the extent necessary to meet the requirements of the zoning code and make the determination of compatibility. Lastly, since Home Depot accepted the benefits of the use permit, it cannot now argue the condition's invalidity.

With regard to the appellant's second (#2) and fourth (#4) issues of whether the new screening condition is authorized by the zoning code and whether Home Depot's "staging" is "storage," two points are noted. Staff's photographic record of Home Depot's outside conditions in the parking lot verifies Home Depot's pattern and practice of daily outdoor storage in public view occurring throughout the course of the day, at times obstructing required parking spaces. As to whether this condition is incompatible is evidenced by the complaints and letter received by Parc Metropolitan. In addition, the Council has made it clear by its adoption of the zoning ordinance requiring "all outdoor storage areas of such things as trash and materials to be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum of six (6) feet in height" that outdoor storage is incompatible with any neighborhood.

Regarding the appellant's issue #6 of whether Condition No. 21 requiring a six month review was limited to noise issues only, this answer is found in the review of the August 15, 2000 City Council meeting minutes. The condition speaks to incompatibility in general and as noted above, a six-month review reopens all issues regarding the use permit. Furthermore, the minutes note discussion of a number of potential "incompatibility" issues, including Home Depot's penchant for outdoor storage observed at their former Landess store location. Since Home Depot stated there would not be outside storage, the Council was willing to make that assessment through a permit review after the business opened.

Regarding issue #5 raised by the appellant that a new nine-foot tall wall will have a negative aesthetic effect and will only benefit three residents, a site and architectural review of a wall design submitted by Home Depot was conducted by the Planning Commission in November 2001. The Planning Commission found the wall design, which included reveals and pilasters, to be acceptable as did Parc Metropolitan who was given an opportunity to review the design prior to consideration by the Planning Commission. A screen wall will help deflect and muffle some of the noise generated from Home Depot's loading and unloading operations which are restricted to the hours of 7 am to 7 p.m. on the north side of the property. The visual improvement the wall provides will benefit all Parc Metropolitan residents, as well as Great Mall patrons living in the City and visiting the City who use Great Mall Drive and are currently exposed to the sight of unacceptable outdoor storage.

Based on the above points and in response to the appellant's third (#3) statement that Home Depot has complied with all conditions of approval, staff's conclusion is that Home Depot has not met all of their use permit conditions until screening has been installed. More detail is included in the Council's agenda packet, which includes a copy of the Planning Commission staff report and meeting minutes that further describe the nature of the request and the Planning Commission's action.

RECOMMENDATION:

1. Close the Public Hearing.
2. Uphold the Planning Commission's action relative to Home Depot's six month review of Use Permit No. 1555, including the addition of the new special condition for the construction of a new screen wall, based on the findings.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 7, 2003

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. REVIEW PROJECT CLOSEOUT PROGRESS; APPROVE CONTRACT CHANGE ORDERS; ADOPT RESOLUTIONS FOR INITIAL ACCEPTANCE; CIVIC CENTER (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)

BACKGROUND: The project construction delivery system is a multiple prime contractor process, where the City has contracted all the elements of work with individual contractors. Two additional contractors (BBI Engineering & Sasco) have fulfilled their contract obligations including completion of all punchlist work. Staff is recommending initial acceptance of these two contracts. Staff also recommends release of the contract retentions. The work is subject to one-year warranty period beginning on the date of initial acceptance. The contractor's faithful performance bond for each contract may be reduced to 10% of the contract amount. There are six remaining construction contractors, who are still working on their punchlists and will be ready for initial acceptance of their work, over the next two months.

An additional 19 contract change orders are recommended for approval at this time. These change orders are for the purchase of additional lobby furniture, credits from contractors from savings due to value engineering and backcharges due to trade damage. A change order summary, describing the work, cost for each change order and basis for credits is included in the Council's agenda packet.

Lastly, additional cost recoveries are being realized as the City closes out the multiple prime contracts. The reason for this is primarily due to the City's ongoing efforts to control costs (i.e. as the blueprinting, tracking backcharges, and tracking actual contractor time and materials) to

assure efficiencies from contractors are also passed on to the City. An update report on the Civic Center budget will be presented at the Council meeting by Project staff.

RECOMMENDATION:

1. Adopt resolutions granting initial acceptance of contract work for contracts listed in the contract summary list, subject to a one-year warranty period and reducing the faithful performance bond to 10% of each contract.
2. Approve contract change orders included in the contract change order summary sheet.

***RA6. REQUEST AUTHORIZATION TO PURCHASE AND RESALE AFFORDABLE HOUSING UNIT AT 24 RAIN WALK AT THE PARC METROPOLITAN GREAT MALL RESIDENTIAL DEVELOPMENT (STAFF CONTACT: FELIX RELIFORD; 586-3071)**

BACKGROUND: On November 19, 2002, staff received a letter from the property owner, Mr. Thang Nguyen requesting to sell his townhome unit at 24 Rain Walk in the Parc Metropolitan residential development. Mr. Nguyen has owned the unit since March 2002. The below market rate unit is 1,353 sq. ft. and the selling price is approximately \$326,500 for a moderate-income household. Based on the City's Property Value Restrictions, Resale and Option to Purchase contract agreement with the property owner, the City has 90 days to find a potential buyer and complete escrow or the property owner can sell the unit at fair market rate. The 90 days will expire by February 19, 2003.

Over the past month, the City has been working with the lender, Builders Mortgage Company (formerly NorthStar Mortgage Company) to find a potential buyer for the unit. Several potential buyers from our previous list met the income qualifications but after conducting background checks, had a history of poor credit or employment problems. Another buyer, who met all the qualifications without any problems, just recently informed the City that his company was conducting massive layoffs and that he no longer wants to be considered a candidate for the unit because of the uncertainty of his future employment.

Staff has placed an ad for the unit in the Milpitas Post, City's Website, Public Library, and e-mail to all City employees. Copies of the ad and applications were also sent to the Milpitas Unified School District for their employees. Staff is concerned that if the February 19th deadline is not met, the unit would be allowed to be sold at market rate, and the City would lose one affordable housing unit in the inventory. Staff is requesting authorization-if a buyer is unable to be found within the time limit-to allow the Redevelopment Agency to purchase the unit and resale the unit at the affordable below market rate.

Appropriate funds are available in the Redevelopment Agency 20% Set-Aside Housing Funds to purchase the unit. Once the unit is resold, the funds will be returned to the Redevelopment Agency.

Included in the Council's agenda packet is the letter from Mr. Nguyen requesting to sell the unit, the City's contract agreement, and background information.

RECOMMENDATION: Authorize the City Manager to have the Milpitas Redevelopment Agency purchase the below market rate unit at 24 Rain Walk at Parc Metropolitan in the amount not to exceed \$326,500 and direct staff to continue to find an eligible moderate-income household to purchase the unit.

***RA7. APPROVE AGREEMENT AMENDMENT BETWEEN THE CITY AND AGENCY, APPROVAL OF A RESOLUTION OF INTENT, AND AUTHORIZATION TO ENGAGE A LOBBYIST (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: The Redevelopment Agency continues toward development of several high priority projects, a new library, senior center, community center, Elmwood and Midtown development. The state's budget deficit has produced an environment of uncertainty with regard to the Redevelopment Agency's activities that may make it more difficult to complete the

Agency's highest priorities. To allow the Agency to proceed with the development of its priority projects, it is recommended that the Agency take the following three actions: 1) approve an amended and restated Public Works Agreement; 2) adopt a Resolution of Intent to Issue Bonds; and 3) authorize the engagement of a lobbyist.

State law, (Health and Safety Code Section 33670 (b) and 33675) prescribes the justification and means under which a redevelopment agency claims property tax. The law requires that no later than October 1 of each year the Agency submit a statement of indebtedness. Milpitas' statement of indebtedness references a combination of bonded debt and debt incurred as a result of the City advancing funds to the Agency, the "public works agreement." The Agency/Council approved this fiscal year's public works agreement on June 4, 2002. The current agreement does not allow the City to demand early payment from the Agency. The new public works agreement will replace the existing agreement and will allow the City to secure repayment of advanced monies by demanding payment from the Agency at the City's discretion at any time. This would potentially provide the City with greater assurance of repayment from the Agency.

Although constrained by its \$75 million limitation on bonded debt, the Agency has a small amount of capacity to issue bonds. After January 15, 2003, this capacity will increase to approximately \$11.7 million. It is recommended that the Agency/City adopt a Resolution of Intention to initiate a bond issuance not to exceed \$11.7 million. Such a resolution is valid for 18 months, but does not obligate the Agency to issue bonds while providing some assurance that the Agency could issue future bonds. According to a Financial Advisor, a bond could be issued within 60 days, through a private placement, at an interest rate of approximately 2.5 percent.

Due to uncertainty with regard to the actions of the State Legislature, in relation to redevelopment agencies' activities and the fact that the Milpitas Agency is processing an amendment to its Redevelopment Plan, it is believed that a significant legislative presence is needed in Sacramento in order to respond quickly to any potential amendment proposals regarding redevelopment. The Agency's consulting team for the Agency's Plan has recommended Kenneth Emanuels. Ken Emanuels has 15 years experience as an independent contract lobbyist. Previously, he was the chief lobbyist for the League of California Cities. He specializes in matters of municipal finance, public works, and redevelopment. References spoke very highly of Mr. Emanuels. Mr. Emanuels currently represents several cities including the cities of Sacramento, Newport Beach, Pasadena, Santa Rosa, and Novato. It is recommended that the Agency secure the services of a lobbyist to represent the Agency's interests in Sacramento for an amount not to exceed \$2,500 per month for 12 months.

RECOMMENDATION:

1. Approve agreement amendment between the City of Milpitas and the Milpitas Redevelopment Agency for the Construction of Public Improvements.
2. Adopt a Resolution Declaring Intention to Reimburse Expenditures from the Proceeds of Obligations to be issued by the Redevelopment Agency.
3. Authorize the Executive Director to enter into an Agreement for Lobbying Services in an amount not to exceed \$2,500 per month for 12 months.

***RA8. AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH RGC COURTHOMES, INC., FOR AFFORDABLE HOUSING UNITS (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: RGC CourtHomes, Inc., of Newport Beach, California is proposing to develop the 7.4-acre Lockheed Martin site fronting Curtis Street with approximately 282 residential units. Attached is a request from the developer seeking Agency financial assistance to develop approximately 42 of the above units for moderate and low-income buyers. It is recommended that the Board authorize staff to enter into negotiations with RGC CourtHomes, Inc. for the purpose of providing financial assistance from the Agency's Affordable Housing set-aside funds. The developer has requested specific forms of financial assistance. Agency authorization to enter into negotiations should not be considered implied approval for any of the

forms of assistance requested by the developer. Any agreement negotiated is subject to Agency/Council review and approval.

RECOMMENDATION: Approve Authorization to enter into negotiations with RGC CourtHomes, Inc., to provide Agency Finance Assistance from its Affordable Housing set-aside funds.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

3. STATUS REPORT AND REVIEW OF ALL AMERICA CITY COMPETITION: MAYOR ESTEVES

BACKGROUND: Mayor Esteves has asked staff to provide the Council with an update and review of the All America City Competition. Staff will present an oral report at the meeting on the progress to date.

RECOMMENDATION: Hear report and provide direction to staff.

***4. APPROVE RE-APPOINTMENT TO THE SENIOR ADVISORY COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the reappointment of Bakshish Kaur Sandhu to the Senior Advisory Commission with a term expiring December 2004.

RECOMMENDATION: Approve the reappointment of Bakshish Kaur Sandhu to the Senior Advisory Commission.

5. DISCUSSION OF BROADCASTING CITY MEETINGS OVER THE INTERNET AND PUBLISHING STAFF REPORTS ONLINE: COUNCILMEMBER GOMEZ

BACKGROUND: Councilmember Gomez is asking the Council to consider broadcasting City meetings over the Internet and publishing staff reports online.

RECOMMENDATION: Consider the request and direct staff accordingly.

XV. UNFINISHED BUSINESS

6. APPROVE OFF-LEASH DOG PARK PROJECT – ENVIRONMENTAL REVIEW, SITE LEASE, SUPPLEMENTAL BUDGET APPROPRIATION, AUTHORIZATION TO BID (STAFF CONTACT: BLAIR KING, 586-3060)

BACKGROUND: In January 1997, the City commenced an effort to select a site and develop a specialized recreational facility for dogs to run off-leash. Unable to identify a suitable location within an existing City park, the City in October 1998 approached the County of Santa Clara to request that the City be allowed to develop a dog park in Ed Levin County Park within the City limits. In June of 2001, the County Parks and Recreation Commission voted to endorse the concept of a dog park in the Spring Valley area of Ed Levin Park, subject to the negotiation and approval of lease and operations lease agreements between the City and County. Subsequently, the equestrian community raised concerns about the Spring Valley location. In response to these concerns, the City, County and many interested citizens' community members identified the former group picnic area near Sandy Wool Lake in Ed Levin Park as the preferred location for the dog park. On October 2, 2002, the County Parks and Recreation Commission approved this location.

Negative Declaration – Pursuant to the California Environmental Quality Act (CEQA) an Environmental Assessment has been completed. Based upon the results of this assessment a Negative Declaration has been prepared and circulated.

The project consists of the conversion of an existing developed site in Ed Levin Park, (the former group picnic area which was relocated to a new site) into a 1.57 acre dog park. The site will be improved with a five-foot high green, vinyl-clad chain link perimeter fence, a four-foot high interior fence to divide the large and small dogs, a six-foot high landscaped berm along the eastern site of the dog park, turf, landscaping, decomposed granite, benches, kiosk, and a ten-stall parking lot. The project will not have a significant effect upon the environment other than minor localized increases in noise, drainage, parking, and traffic impacts.

The public comment period for the Negative Declaration began December 2, 2002, and ended on January 1, 2003. No comments were received during the comment period. As a responsible agency, the County of Santa Clara is scheduled to adopt the Negative Declaration, after the City Council, on February 11, 2003.

The Lease – The term of the lease is 15 years initially with a 10-year extension. The City is responsible for the costs of construction and operation. No other compensation is owed. The usual and customary insurance and indemnification requirements apply.

Of special note is the provision that if the City should terminate the lease during the initial term, the City will be required at the County's discretion to pay \$16,800 per year to the County for operational costs for the remainder of the unexpired initial term, or remove the improvements at the City's expense. Upon the termination of the lease, if the County chooses not to assume operation of the dog park, the County can ask the City to remove the improvements. Also, in order to avoid potential over use at Ed Levin Park during peak periods, upon a 24-hour notice by the County, the City will be required to close the dog park. The City will close the dog park no more than 12 times during a year.

A requirement that will have an effect upon the operation of the dog park, but is not contained within the lease, is the County's prohibition regarding the use of pesticides at Ed Levin Park. The City will be required to conform its maintenance practices to this requirement.

Finally, the lease requires that the City adopt rules with regard to the use of the dog park. Rules will be presented to the City Council in the form of an ordinance for future adoption.

On December 19, 2002, the County Board of Supervisors Housing, Land Use, Environment & Transportation Committee recommended that the lease be adopted by the full Board of Supervisors. The lease is scheduled for approval by the Board on February 11, 2003.

Supplemental Budget Appropriation - \$189,000 is currently available for the project. Staff is requesting a supplemental budget appropriation of \$122,000 from the Park Fund unreserved undesignated Fund Balance. Currently, this fund has an unreserved undesignated balance of \$5.1 million.

Originally, the estimates developed for this project were not site specific and did not include input from the constituent community and did not reflect construction estimates. The construction estimates have been acquired and are now site specific and incorporate ideas from other dog parks.

The original revised Engineer's estimate, produced in December was \$289,000 for construction. This estimate has been trimmed by \$45,200 to \$243,800. Of this estimate of \$243,800, approximately \$55,000 is directly related to specific site requirements such as the landscaped berm and paved parking. The construction cost estimate is similar to the cost of other dog parks. In September, the City of Fremont approved \$248,000 to rehabilitate a dog park opened in June 2001 that was originally constructed for \$131,000.

On September 23, 2002, the Arts Commission voted to request that the City Council commit an amount equal to two percent of construction costs to public art in the dog park. Staff recommends an appropriation of \$2,000, in-lieu of establishing a precedent based upon a percentage of capital costs. Two thousand dollars for art has been incorporated into the supplemental budget request.

Project Plans, Specifications, and authorization to bid – The City Council authorized a contract with Royston Hanamoto Alley & Abey (RHAA) to prepare construction plans, specifications, and Engineer's estimates. Plans and specifications for the dog park are now complete and ready for approval. A copy of the plan title sheet is included in the Council's agenda packet. Plans and specifications are available for review in the office of the City Engineer. Construction is expected to commence in April. The construction period is 90 working days. Liquidated damages will be assessed at \$500 per day. A representative of the constituent community has reviewed the plans.

RECOMMENDATION:

1. Adopt a Resolution adopting a Negative Declaration for a dog park at Ed Levin County Park
2. Approve a Lease between the City of Milpitas and County of Santa Clara for a dog park at Ed Levin Park.
3. Approve a Supplemental Budget Appropriation in the amount of \$122,000 from the Park Fund Unreserved, Undesignated Fund Balance for the Dog Park Project, CIP (5072).
4. Approve project, plans and specifications and authorize advertising for bid proposals for construction.

XVI. NEW BUSINESS

7. APPROVE THE 2003 COMMUNITY ADVISORY COMMISSION WORK PLAN (STAFF CONTACT: JAMES LINDSAY, 586-3274)

BACKGROUND: Pursuant to the Community Advisory Commission (CAC) Bylaws, the CAC serves as an advisory body to the City Council on matters affecting citizens relating to community improvement. Since 2000, the CAC has developed an annual work plan to focus on projects and programs that benefit the Milpitas community. Past work plan accomplishments include implementing the Neighborhood Beautification Ordinance, participating in the Streetscape Master Plan, hosting a town hall meeting, and participating in creek clean up, neighborhood clean up, and neighborhood tree planting events. For the current year, the CAC held working sessions during their December and January meetings to develop the 2003 Work Plan, as shown below:

Short Term Goals

1. City Tree Planting Programs: Assist in drafting Tree Protection Ordinances.
2. Neighborhood Night-Out and WATCH: Approach other City Commissions to solicit volunteers to create a program in their neighborhoods. Request Council to designate August as National Night Out month.
3. Milpitas' 50-Year Anniversary Celebration: A subcommittee of the CAC as been created to start brainstorming themes and ideas to celebrate the City's 50-Year Anniversary.
4. Review the Term of the Mayor: Create a CAC subcommittee to review increasing the term of the Mayor from two to four years.
5. Ethical Campaign Workshop: Host a workshop focused on campaign ethics.
6. Town Hall Meeting: Host a town hall meeting to solicit community feedback on the effectiveness of the NBO and other community programs/issues.
7. Street Sweeping: Advocate the need for an enforceable street-sweeping schedule.
8. Homeowner Associations Meeting: Host a meeting with various City Neighborhood and Homeowner Associations to listen to issues and concerns.

Long Term Goals

1. Cellular Phone Usage: Create a CAC subcommittee to analyze safety concerns with cellular phone usage while driving and submit report to City Council.
2. Thank You Activity for City Personnel: Create a CAC subcommittee to gather information on what other jurisdictions do and bring back to the CAC for a recommendation to be approved by the City Council.

Recurring Annual Tasks

- CDBG public hearing process (March)
- Review City calendar theme and layout (March)
- Host NBO booth at Arbor Day, Global Village, and 4th of July events (on-going)
- Select Neighborhood Beautification Awards (October)
- Holiday social and tree trimming (November)
- Work session for annual work plan (December)

RECOMMENDATION: Approve the proposed 2003 Community Advisory Commission Work Plan.

8. **APPROVE REQUEST FOR FLAG CEREMONY AT HIGUERA ADOBE: BOY SCOUTS OF AMERICA TROOP 101 REQUESTS PERMISSION TO RAISE THE AMERICAN AND VIETNAMESE FLAGS AT THE HIGUERA ADOBE ON JANUARY 25, 2003, 10:30 A.M. TO 12:30 P.M. (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: January 25, 2003, marks the Vietnamese New Year. Boy Scout Troop 101 requests permission to acknowledge the New Year with a Flag Raising Ceremony at the Higuera Adobe. This includes raising both the American and Vietnamese flags on January 25, 2003, from 10:30 a.m. to 12:30 p.m.

RECOMMENDATION: Consider request.

- *9. **ACCEPT WAL-MART'S SAFE NEIGHBORHOOD HEROES GRANT AND INCREASE BUDGET APPROPRIATION FOR GRAFFITI ABATEMENT (STAFF CONTACT: GLORIA ANAYA, 586-3075)**

BACKGROUND: Wal-Mart, through its Safe Neighborhood Heroes Grant Program, has awarded the City of Milpitas a \$1,000 grant to be used for its Graffiti Abatement Program. Staff is recommending that the Council accept the grant and increase the FY 02-03 budget appropriation for graffiti abatement by \$1,000. On behalf of the City, a letter will be sent to Wal-Mart thanking them for the donation.

RECOMMENDATION: Accept the \$1,000 Wal-Mart Safe Neighborhood Heroes Grant and increase the FY 02-03 budget appropriation for graffiti abatement by the same amount.

- *10. **REPORT ON CABLE TV FRANCHISE RENEWAL PROGRESS (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: In 1983, the City adopted Chapter 22 of the Milpitas Municipal Code, providing a procedure for the nonexclusive franchise of cable communications and granted a franchise to Hearst Cablevision. In February of 1996, Council approved a transfer of the cable franchise to TCI Cablevision and extended the term of the franchise through April 2003. This franchise agreement was subsequently assumed by AT&T, which has merged with Comcast to become AT&T/Comcast. The term of the current franchise was extended to October 2003 by Council action in August of 2002 to allow for a needs assessment prior to renewal.

To assist in the renewal process, a team was formed consisting of the Assistant City Manager, the Chair of the Telecommunication Commission, and staff from the City Attorneys Office and the Information Services Department. This team in conjunction with staff prepared a Request for Proposal (RFP) for consulting services related to franchise renewal and distributed it to seven

firms. Three responses were received and were reviewed by the team and the Telecommunications Commission. Through this process a consultant was selected and in August of 2002, Council approved an agreement with Moss & Barnett for services related to the franchise renewal. Over the past several months, the renewal process has been initiated and is now at a point that requires a decision on the type of renewal process to follow as allowed by federal law.

The staff report, included in the Council's agenda packet, and presentation provide an update on the overall progress of the Cable TV Franchise renewal and a recommendation to proceed with a formal renewal process as defined by federal law. The staff report and presentation contain background information along with explanations of the two renewal processes that may be used and the rationale for choosing one approach over the other.

RECOMMENDATION:

1. Note receipt and file staff report.
2. Direct staff to continue with the renewal via the formal process.

XVII. ORDINANCES

***11. ADOPT ORDINANCE NO. 227.3, AMENDING CHAPTER 215 OF TITLE V TO PROHIBIT SMOKING WITHIN 25 FEET OF ENTRANCES TO ALL CITY-OWNED BUILDINGS (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: At its January 7, 2003, meeting, the City Council introduced Ordinance No. 227.3 prohibiting smoking within 25 feet of entrances to all City-owned buildings. This ordinance, included in the Council's agenda packet, is now ready for adoption.

RECOMMENDATION:

1. Waive full reading of Ordinance No. 227.3.
2. Adopt Ordinance No. 227.3 amending Chapter 215 of Title V to prohibit smoking at entrances to City-owned buildings.

***12. ADOPT URBAN RUNOFF ORDINANCE NO. 239.1 AMENDING SECTIONS 2, 6, 8, 11, REPEALING SECTIONS 12 THROUGH 15, AND ADDING NEW SECTIONS 12-14 TO CHAPTER 16, TITLE XI OF THE MILPITAS MUNICIPAL CODE ESTABLISHING AN ADMINISTRATIVE CITATION PROCESS FOR URBAN RUNOFF POLLUTION VIOLATIONS (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: This ordinance amendment revising urban runoff requirements was introduced at the January 7, 2003, City Council meeting and is ready for adoption. The primary purpose of the revision is to provide urban runoff pollution control enforcement by adding an administrative citation process. Several other minor administrative revisions are also included such as changing the title to "Urban Runoff" from "Non Point Source."

RECOMMENDATION:

1. Waive full reading beyond the title.
2. Adopt Ordinance No. 239.1 amending Sections 2, 6, 8, 11, repealing Sections 12-15, and adding new Sections 12-14 to Chapter 16, Title XI of the Milpitas Municipal Code.

XVIII. RESOLUTION

***13. ADOPT RESOLUTION DECLARING A PUBLIC WATER SHORTAGE EMERGENCY AND APPROVE EXTENSION OF WATER SUPPLY FOR SPRING VALLEY HEIGHTS SUBDIVISION (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: On October 1, 2002, Council approved Resolution No. 7223 to provide emergency water to Spring Valley Heights Mutual Water Company (SPVH-MWC) until January 31, 2003, due to a well failure. Under provisions of Ordinance 38.742, emergency water can be provided to meet health and safety needs of the community. SPVH-MWC has

now submitted a request for an extension of the emergency water supply beyond January 31, 2003, due to continued water shortage resulting from (1) a delay in completion of the new well construction, and (2) concern that even with the new well dependable supply is questionable. SPVH-MWC has also requested a permanent connection to the City Water System and staff is reviewing the request as a separate item.

According to Ordinance No. 38.742, the following four criteria must be met before Council may approve a temporary emergency water supply:

- An urgent public health or safety concern exists.
- An independent certified professional engineer determines that City supply is the only economically justifiable solution to the health and safety concern.
- The subdivision map for the sites in question had been recorded on or before November 3, 1998.
- The applicant is responsible for the cost to provide service.

Staff has determined that all the above criteria continue to apply and that the emergency water supply will not affect the ability of the Milpitas distribution system to meet customer demand. Staff therefore recommends that the Council adopt the resolution extending emergency water supply for SPVH-MWC until a determination is made that the new well is dependable, a permanent solution to the water shortage is found, or December 31, 2003, whichever occurs sooner.

RECOMMENDATION: Adopt Resolution approving extension of emergency water supply for Spring Valley Heights.

XIX. BIDS AND CONTRACTS

14. APPROVE SECOND AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN CITY OF MILPITAS AND THOMAS J. WILSON (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: Consistent with direction provided by the City Council, please find included in the Council's agenda packet a draft Second Amendment to the Employment Agreement between the City of Milpitas and Thomas J. Wilson for service as the City Manager and Executive Director of the Milpitas Redevelopment Agency. The draft amendment provides for two substantive contract modifications and also modifies the express language of the existing contract to reflect participation in the 2.7 at 55 PERS retirement program previously approved for all employees in the miscellaneous (non-public safety) employee group. The first modification transfers the \$550 monthly amount presently paid to the City Manager for an automobile allowance to salary and removes any automobile allowance from the City Manager's employment contract. The second amendment incorporates a 2.5 percent salary increase. With these modifications, the annual salary for the City Manager will be \$184,771. There are no further modifications to the City Manager's employment agreement.

RECOMMENDATION: Approve the Second Amendment to the Employment Agreement between the City of Milpitas and Thomas J. Wilson.

***15. APPROVE AGREEMENT AMENDMENT: MACKAY AND SOMPS CIVIL ENGINEERS, INC., STATE ROUTE 237/I-880 RIGHT-OF-WAY ENGINEERING, (PROJECT NO. 4170) (STAFF CONTACT: ELIZABETH RACCA-JOHNSON, 586-3306)**

BACKGROUND: On March 18, 1997, the Council authorized an agreement with the Santa Clara County Traffic Authority (TA) (the predecessor agency of the Santa Clara Valley Transportation Authority) for Milpitas' assumption of the TA's design and right-of-way consultant agreements associated with the 237-880 interchange project. The City assumed several consultant agreements, including one for right-of-way engineering services, provided by MacKay and Soms Civil Engineers, Inc.

Additional consulting services beyond the scopes of the agreements, which were negotiated by the TA, have become necessary including completion of Right of Way Record of Survey Maps and the establishment of right-of-way monuments. The fee associated with these services is proposed not-to-exceed \$15,677, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with MacKay and Somps Civil Engineers, Inc., in the amount of \$15,677, subject to approval as to form by the City Attorney.

***16. AUTHORIZE THE PURCHASE OF A REPLACEMENT FIRE ENGINE (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff reviewed specifications and issued a Request for Quotation for a new Fire Engine that will replace a fifteen year old engine. Bids for the semi-custom triple pumper were sent to four dealers and manufactures on Purchasing's qualified bidders list. Bidders were given four weeks to submit a bid and only one responded. The other bidders were contacted as to why they did not submit bids and responded as follows: one stated they were currently backlogged and could not meet our delivery time, another had a fire at their plant office and could not compile a comprehensive response to our bid and the third did not return any of the five phone messages left by staff. Since all qualified manufacturers of triple pumpers were contacted directly or through their dealers and that there are no others that could build a unit for the Fire Department, per Municipal Code Section I-2-5.08, a sole source purchase is established. Golden State Fire Apparatus, Inc., representing Pierce Manufacturing, submitted their bid in the amount of \$367,727.56, which is within the approved budget funded by the Equipment Replacement Fund.

RECOMMENDATION: Authorize the purchase of a new fire engine as a sole source purchase from Golden State Fire Apparatus, Inc. in the amount of \$367,727.56 including tax and shipping.

***17. AUTHORIZE PURCHASE OF REPLACEMENT PUBLIC SAFETY COMMUNICATIONS RADIOS (PROJECT NO. 8125) (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued a Request for Quotation for 54 portable and mobile two-way communication radios and accessories for the Police and Fire Departments. These radios are scheduled for replacement this fiscal year in the project budget. Bid packets were sent to three bay area suppliers and the western distributor of the Motorola equipment. All four responded. The following is the recap of the four quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Motorola, Inc.	\$71,680.50
Day Wireless Systems	\$74,862.45
Golden State Communications	\$75,983.51
Telepath Corp	\$84,274.25

There are sufficient funds in the Radio Replacement Plan project (Project No. 8125) for the purchase of the radios and accessories.

RECOMMENDATION: Award the bid for the purchase of the communication radios and accessories to the lowest bidder, Motorola, Inc., in the amount of \$71,680.50 including tax and shipping.

XX. CLAIMS AND DEMANDS

***18. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS/ CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$6,794.52 to L N Curtis and Sons for the purchase of wildland firefighting clothing and gear for the Fire Department. (Funds are available from the Fire Department budget for this purchase.)
2. \$15,000.00 to Santa Clara County Sheriff's Department for the City's estimated annual shared cost of the SLETS and automated warrant system computer access for the Police Department. (Funds are available from the Police Department operating budget for this service.)
3. \$6,169.00 to JAECO Fire and Safety for the purchase of four Level A Hazardous material, fully encapsulated protective suits to restock inventory for the Fire Department. (Funds are available from the Fire Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

***19. APPROVE PAYROLL REGISTER (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: The Payroll Register for the period ending December 28, 2002, in the amount of \$1,539,563.64 is submitted for approval.

RECOMMENDATION: Approve Payroll Register as submitted.

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 4, 2003
AT 7:30 P.M.**